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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/628,126      07/28/00      GOODWIN      R      2804-1

022932  
IMMUNEX CORPORATION  
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SEATTLE WA 98101

HM12/1031

EXAMINER

JAMROZ, M

ART UNIT

PAPER NUMBER

1644

DATE MAILED:

10/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/628,126

Applicant(s)

GOODWIN ET AL.

Examiner

Margaret E Jamroz

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 27-49 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *restriction election facsimile*.

### DETAILED ACTION

1. The location of your application in the PTO has changed. To aid in correlating papers for this application, all further correspondence regarding this application should be directed to Megan Jamroz in Art Unit 1644, Technology Center 1600.
2. Upon further consideration, the following restriction is set forth.
3. Claims 27-49 are pending and are presently being acted upon.
4. The following is noted:  
Claims 27 and 28 broadly recite "diagnostic and therapeutic agents". Diagnostic assays and therapy differ with respect to their ingredients, steps, and endpoints; one of ordinary skill in the art would not envision one in view of the other. Therefore, the restriction is set forth *irrespective* of the format of the claims.

### ***Restriction Requirement***

5. Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

6. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 27, 28, 32-39, and 40-45, drawn to a method of delivering a diagnostic agent to CD30+ cells comprising a conjugate comprising a diagnostic agent attached to a CD30 ligand polypeptide as it reads on an oligomer; classified in Class 436, subclass 501.
- II. Claims 27-30, 32-39, and 40-46, drawn to a method of delivering a therapeutic agent to CD30+ cells comprising a conjugate comprising a therapeutic agent attached to a CD30 ligand polypeptide as it reads on an oligomer; classified in Class 424, subclass 192.1.
- III. Claims 31 and 47-49, drawn to a method of treating large cell anaplastic lymphoma comprising administering an effective amount of a soluble CD30-L to a human; classified in Class 424, subclasses 85.1 and 192.1.

7. Groups I-III are different methods. A method of delivering a diagnostic agent, a method of delivering a therapeutic agent, a method for reducing proliferation, and a method of treating differ with respect to ingredients, method steps, and endpoints; therefore, each method is patentably distinct.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

### ***Species Election***

9. This application contains claims directed to the following patentably distinct species of the claimed Inventions I, II, and III: wherein the polypeptide comprises:

- A) non-oligomeric murine CD30-L,
- B) oligomeric murine CD30-L,
- C) non-oligomeric human CD30-L, or
- D) oligomeric human CD30-L.

These species are distinct because the sequences are different; thus each condition represents patentably distinct subject matter.

Applicant is reminded to pick one ultimate species with respect to the oligomer combination whether it be two, three, or more polypeptides.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 27, 28, and 31 are generic.

10. This application contains claims directed to the following patentably distinct species of the claimed Inventions I-II: wherein the specification discloses that the diagnostic or therapeutic agent is (page 14, lines 35-37; page 15, lines 1-13):

- A) drugs,
- B) toxins,
- C) radionuclides,
- D) chromophore, or
- E) enzyme.

These species are distinct because the drugs, toxins, radionuclides, chromophores, and enzymes as disclosed differ with respect to their structures and modes of action; thus each agent represents patentably distinct subject matter.

Applicant is reminded to identify which agents will be used for diagnostic purposes *versus* therapeutic purposes.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 27 and 28 are generic.

11. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

12. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Megan Jamroz whose telephone number is (703) 308-8365. The examiner can normally be reached Monday through Friday from 8:00 AM to 4:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Margaret (Megan) Jamroz, Ph.D.  
Patent Examiner  
Technology Center 1600  
October 30, 2001

*Phillip G. Gambel*  
PHILLIP GAMBEL, PH.D.  
PRIMARY EXAMINER  
*TECH CENTER 1600*  
*10/31/01*